

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CHARLES ELLIS,

Plaintiff,

v.

COUNTY OF KERN, *et al.*,

Defendants.

Case No. 1:22-cv-00436-ADA-BAM (PC)

ORDER REGARDING DISTRICT JUDGE'S ORDER GRANTING PLAINTIFF LEAVE TO FILE SECOND AMENDED COMPLAINT OR NOTIFY COURT OF WILLINGNESS TO PROCEED ON COGNIZABLE CLAIMS

(ECF No. 12)

THIRTY (30) DAY DEADLINE

Plaintiff Charles Ellis ("Plaintiff") is a county jail inmate proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

On September 18, 2023, the assigned District Judge issued an order adopting, in part, the May 4, 2022 findings and recommendations regarding Plaintiff's first amended complaint. (ECF No. 12.) Within thirty (30) days, the District Judge directed Plaintiff to either: (1) file an amended complaint indicating whether he intends to bring a Fourth Amendment claim and the Defendants against whom he intends to bring that claim; or (2) file a notice of intent to proceed on only the Fourteenth Amendment excessive force and denial of medical care claims identified in the findings and recommendations. (*Id.*)

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1 Pursuant to that order, Plaintiff is reminded that if he does not wish to file a second
2 amended complaint and he is agreeable to proceeding only on the cognizable claims identified by
3 the Court's May 4, 2022 findings and recommendations, he may file a notice informing the Court
4 that he does not intend to amend, and he is willing to proceed only on his cognizable claims as
5 alleged in the first amended complaint. The Court will then recommend that the remaining
6 claims be dismissed from this action, and then initiate the process for service of the complaint.

7 If Plaintiff wishes to file a second amended complaint, any such amended complaint
8 should be brief, Fed. R. Civ. P. 8(a), but it must state what each named defendant did that led to
9 the deprivation of Plaintiff's constitutional rights, *Iqbal*, 556 U.S. at 678–79. Although accepted
10 as true, the “[f]actual allegations must be [sufficient] to raise a right to relief above the
11 speculative level . . .” *Twombly*, 550 U.S. at 555 (citations omitted). **Plaintiff's amended
complaint may not exceed twenty-five (25) pages, exclusive of exhibits.**

12 Additionally, Plaintiff may not change the nature of this suit by adding new, unrelated
13 claims in his first amended complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (no
14 “buckshot” complaints).

15 Finally, Plaintiff is advised that an amended complaint supersedes the original complaint.
16 *Lacey v. Maricopa Cty.*, 693 F.3d 896, 927 (9th Cir. 2012). Therefore, Plaintiff's amended
17 complaint must be “complete in itself without reference to the prior or superseded pleading.”
18 Local Rule 220. **Thus, any second amended complaint must fully reallege all of the claims
Plaintiff intends to pursue in this action, including any claims under the Fourth or
Fourteenth Amendments.**

19 Based on the foregoing, it is HEREBY ORDERED that:

20 1. The Clerk's Office shall send Plaintiff a complaint form;
21 2. Within **thirty (30) days** from the date of service of this order, Plaintiff must either:
22 a. File a second amended complaint, **not to exceed twenty-five (25) pages**, curing
23 the deficiencies identified by the Court's orders and indicating whether he intends
24 to bring a Fourth Amendment claim and the Defendants against whom he intends
25 to bring that claim; **or**

b. Notify the Court in writing that he does not wish to file a second amended complaint and he is willing to proceed on his first amended complaint only on his claims against Defendants Gifford, Alvarez, Boyd, and Lemon for excessive force and denial of medical care in violation of the Fourteenth Amendment for the incident on March 23, 2022; and

3. If Plaintiff fails to comply with this order, the Court will recommend dismissal of this action, without prejudice, for failure to obey a court order and for failure to prosecute.

IT IS SO ORDERED.

Dated: **September 19, 2023**

/s/ *Barbara A. McAuliffe*
UNITED STATES MAGISTRATE JUDGE